

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

MYERS PLUMBING, INC.

and

Cases 15-CA-17537
15-CA-17542
15-CA-17580

PLUMBERS AND STEAMFITTERS
LOCAL UNION NO. 60

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Valerie Bennett, Esq.
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for the Charging Party.
John T. Andrishok, Esq.,
for the Respondent.

DECISION

Statement of the Case

LAWRENCE W. CULLEN, Administrative Law Judge: This consolidated case was heard before me in New Orleans, Louisiana, on August 1 and 2, 2005. The case is based on charges filed by Plumbers and Steamfitters Local Union No. 60 (“the Charging Party” or “the Union”) with the National Labor Relations Board (“the Board”) and alleges that Myers Plumbing, Inc. (“the Respondent” or “Myers Plumbing”) has committed violations of Sections 8(a)(1) and (3) of the National Labor Relations Act (“the Act”). The complaint is joined by the answer filed by the Respondent wherein it denies the commission of any violations of the Act.

After due consideration of the testimony and evidence received at the hearing and the briefs filed by the parties, I make the following:

Findings of Fact and Conclusions of Law

I. The Business of the Respondent

The complaint alleges, Respondent admits and I find that at all times material herein that Respondent is and has been a Tennessee corporation with a jobsite in Hammond, Louisiana, herein called the Respondent’s jobsite where it has been engaged in the business of providing commercial and residential plumbing services, that annually in conducting its aforesaid business operations it performed services valued in excess of \$50,000 in states other

than the States of Louisiana and Tennessee and that at all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization

The complaint alleges, Respondent admits and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

Myers Plumbing is a mechanical plumbing contractor with headquarters in Nashville, Tennessee. It performs both residential and commercial plumbing work with some commercial installments in the multimillion dollar range. It received an award of two contracts for the installation of all plumbing fixtures and components for the construction of a large student housing project on the campus of University of Southeastern Louisiana in Hammond, Louisiana (University Project). This project was divided into several phases. Respondent commenced work on the project in July 2004¹. As of the time of the hearing Phase I was complete, Phase II was nearing completion and contracts for Phase III had not been awarded. Capstone Development Corporation of Birmingham, Alabama was the developer and Capstone Building Corporation was the general contractor. Myers entered into two separate contracts with Capstone Building for Phases I and II.

Charles Myers is the owner of Myers Plumbing and has a Louisiana Master Plumber's license, issued by the Louisiana State Plumbing Board, which oversees plumbing operations in the State of Louisiana. On August 24, 2004, a Louisiana State Plumbing Board enforcement officer, James Clark, made an unannounced visit to the Capstone project and issued a citation to Respondent alleging that it was performing plumbing work on the project with unlicensed plumbers and that any unlicensed plumbers who served as plumbers or apprentices exceeded a permissible ratio of one journeyman plumber to one apprentice or helper. There are three recognized classifications of plumbers under Louisiana laws and regulations. They are master plumbers, journeyman plumbers and apprentices/helpers. LSA-R.S. 37:1377 (D) provides that those who are not engaged in plumbing work are considered laborers and are not subject to Louisiana plumbing laws and regulations. LSA-R.S. 37:1367 provides that apprentices "may engage in the act of plumbing only when they are under the 'direct, constant supervision of journeyman plumbers'." There is a dispute as to what the correct ratio is. However, the Louisiana State Plumbing Board has been enforcing a one to one ratio meaning that there must be one journeyman for each apprentice/helper that is engaged in plumbing work.

James Archdeacon is employed as the Respondent's Project Manager for the University Project. He testified that prior to the start of this project he sought to obtain a permit for the project from state authorities and local parishes (cities) but was informed no permit was required as the project was on the University's premises. Archdeacon testified that he was thus unaware of the one to one ratio requirement and that at the beginning of the project he was hiring a number of employees without regard to their classifications just to get

¹ All dates are in 2004 unless otherwise stated.

the project started. On September 20, Myers received notice from the State Plumbing Board of the alleged violation and that the Plumbing Board would proceed with an action against it. Under LSA-R.S. 37:1378, the State Plumbing Board is vested with the right to suspend or revoke a master or journeyman plumber's license for violations of the plumbing statutes and regulations. In addition Plumbing Board representatives visited the job site on several more occasions to verify that the one to one ratio was being complied with by Respondent. Archdeacon testified that Respondent was concerned about the possibility of losing the job and not being able to bid on the upcoming additional phases of the project. He placed several newspaper advertisements for plumbers. On one occasion he placed newspaper advertisements for "plumbers" and on another occasion he placed newspaper advertisements for "licensed plumbers."

Archdeacon testified that he works out of the Nashville main office but visits the University project every other week. Respondent hired plumbers and laborers at the job site. Archdeacon testified he does not know if Respondent hired helpers. He hired employees and made the final decision based on recommendations of then superintendent Toby Mansfield or if another employee had worked with an applicant previously and brought the applicant to the job site. Archdeacon determines whether the applicant is a laborer or helper. A laborer is used for toting or carrying materials around the job site. A helper is hired for his plumbing experience. Respondent hired Chris Wyble as a foreman in October 2004. Superintendent Mansfield was terminated in November 2004, because the general contractor no longer wanted him on the job and because of poor attendance. Mansfield was leaving the job early and was late. As superintendent, Mansfield would lay out the work for the employees. For a short period of two weeks after the termination of Mansfield, Archdeacon had each of the several foremen on the project report directly to him. However this became a problem as it was requiring too much of his time and he promoted Wyble to superintendent of the project. Wyble had been working primarily on Phase one and was helping on the "bottom up part" on 1(a) and 1(b) of Phase One. Phase One 1(a) and 1(b) each consisted of two buildings for student housing. They took approximately eleven months to complete and have been occupied since January 2005. Phase Two was started in the fall of 2004 and was scheduled to be occupied by August 15, 2005. There have been a total of 25 to 30 employees on the job.

The complaint alleges and I find that its Project Manager James (Jim) Archdeacon, its Superintendent, Toby Mansfield, and its foreman, Chris Wyble, were at all material times supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. The uncontroverted evidence developed at the hearing established that James Archdeacon as the Project Manager, had complete authority on his own to hire and fire employees and grant wage increases Superintendent Toby Mansfield recommended the hire of employees and according to the testimony of Project Manager Archdeacon, Mansfield's recommendations were followed 99 percent of the time. Mansfield was the chief person in charge at the jobsite. The evidence further established that foreman Chris Wyble was in charge of the jobsite during Mansfield's absences and after Mansfield was terminated in November 2004. As such Wyble had the authority and exercised it to grant time off, excuse absences, authorize overtime and recommend for hire applicants for employment. The record clearly established that Archdeacon, Mansfield and Wyble were supervisors within the meaning of Section 2(11) of the Act. Further the record established that these three individuals were agents of the

Respondent under Section 2(13) of the Act as they committed the unfair labor practices on behalf of Respondent as set out in the following findings in this decision. Further, Respondent admitted that its employee Bonnie Wood was a Section 2(13) agent.

This case involves the Union's efforts to organize a plumbing contractor and the contractor's response. On August 24th, Union organizers Ronnie Rosser and Charles LeBlanc went to the Respondent's jobsite at the Southeastern University and inquired about plumbing work. They met with then Respondent's superintendent of the University jobsite, Toby Mansfield. They told Mansfield they were seeking employment. LeBlanc told Mansfield he was a licensed journeyman plumber. In fact LeBlanc was not a licensed plumber but was a pipefitter. Rosser told Mansfield he was a helper. Mansfield showed them around the job site, furnished them with hardhats and offered to put them to work that day. He told them he paid licensed journeymen \$18 an hour and helpers \$15 an hour. LeBlanc told Mansfield they would start the next day and he agreed.

It was not until October 28th, that Rosser showed up again at the job site, this time with Charles Joachim, a licensed plumber and a member of the Union. They met with Mansfield who asked Rosser where he had been. Rosser replied, "Around." Mansfield asked them if they were licensed. Joachim pulled out his plumber's license and showed it to Mansfield. Rosser told Mansfield he was Joachim's helper. Mansfield telephoned someone, and said he had two men there who wanted to go to work and apparently in answer to a question said "one of them" and that the other man was his helper. Mansfield offered to put them to work that day. Rosser noticed that Joachim did not have his work boots on and told Mansfield they would start the next day (October 29). The next day they arrived at the job site at 6:30 a.m. and started work at 7:00 a.m. doing "rough in" plumbing by connecting branches to a straight main plumbing line which was being constructed by Darrin Davis and Oscar Pineda, neither of whom were licensed plumbers. Around noon, Mansfield approached them and asked Rosser if he was a Union organizer. Rosser said he was and asked if that was a problem. Mansfield said "no," that there was nothing he could do about it. Mansfield asked Rosser whether he was going to attempt to organize them. Rosser said he would like to. Mansfield asked Rosser how he would go about it and Rosser said the first thing to do would be to obtain signed (union authorization) cards. Mansfield told another employee that these "guys" were from the Union and asked if anyone wanted to join the Union. He later asked Rosser if he had any union stickers. Rosser replied that he did. Mansfield asked him to give him some. Rosser went to his car and retrieved some stickers and gave them to Mansfield who then put one of the stickers on his hard hat and then put a sticker on the hard hat of employee Oscar Pineda. Rosser and Joachim finished the day without further incident.

On the following Monday, (November 1), Rosser and Joachim reported to work and shortly thereafter while Pineda and Mansfield were looking at blueprints, Mansfield's cell phone rang. Pineda picked it up and handed it to Mansfield and said it's "Bonnie." Bonnie is the clerical employee at the home office in Nashville. Rosser and Joachim heard Mansfield's part of the conversation. "But they're good workers" and "not on your time." Mansfield walked away and then returned to the area where Rosser and Joachim were. He then told Rosser, "I've got to let you go." Rosser asked whether it was because he was a union organizer. Mansfield said, "no it's because you don't have a license," Rosser then said that neither Darrin Davis nor Pineda were licensed and they were being permitted to work.

Mansfield then replied “the man covered his ass, its because you don’t have a license.” Rosser testified that an employee from another part of the jobsite came up and he and Mansfield took a couple of steps away. Mansfield then turned around and Rosser asked him again if he was being fired because he was a union organizer. Mansfield “said No! The man said he don’t want any organizer on the job. If they want to do it, they can do it at the gate.” Mansfield then struck his hand out, said, “no hard feelings” and they shook hands. As Rosser was leaving the worksite, Mansfield called out to him and said “why don’t you go on strike.” Rosser replied, “I can’t, you already fired me.” Joachim returned to work and testified that the employees were quiet the rest of the day. On November 3rd, Archdeacon came to the job site. Joachim sought him out and asked him whether he was “Mr. Jim” the “big boss.” Archdeacon acknowledged that he was. Joachim then told Archdeacon he thought the firing of Rosser was a “shitty” thing to do as he was a good worker. Archdeacon told Joachim that he did not mind his being there but he could only talk to the employees about the Union one time and that he would consider anything more to be harassment. Joachim went back to work. He went on strike on November 17th, and was still on strike at the time of the hearing. Respondent’s employee manual contains a non-solicitation clause but does not address talking during work time. Archdeacon testified he has never taken any disciplinary action pursuant to this clause. Both Rosser and Joachim testified that the employees talked freely among themselves [about a wide variety of subjects such as fishing and hunting] while they worked. Archdeacon testified concerning his reasons for discharging Rosser which he asserts were based on Rosser’s lack of a license and Respondent’s need to maintain the one to one journeyman to apprentice/helper ratio being enforced by the Plumbing Board. He also testified that what he had said to Joachim about his discussing the Union was in response to the complaints of other employees that Joachim would not leave them alone after they had said they were not interested in the Union. This statement of Archdeacon was uncorroborated as the employees purportedly making the complaints were not identified and did not testify.

Dana Columbo, a licensed plumber and a member of the Union, testified that he heard from Rosser that Respondent might be looking for licensed plumbers. He went to the Southeastern University jobsite to apply on November 3rd. He met Bobby Brown at the jobsite while he was waiting to talk to Archdeacon. Brown asked him if he was looking for work and was a licensed plumber. Columbo said he was and asked Brown if he was a licensed plumber and Brown said he was a helper. Prior to talking to Brown he talked to a man on a forklift who told him, he needed to talk with Archdeacon. He waited for Archdeacon and was ready to leave when the man on the forklift called him by name although he had not given the man his name. The man said there was a man on the second floor of an adjacent building who wanted to talk to him. He walked over and met foreman Chris Wyble who asked if he was the person looking for a job. Columbo said he was. Wyble asked him about money and Columbo said he was open to the going rate. Wyble said everyone made a different rate. Columbo said throw a number at me. Wyble asked him who he had worked for and Columbo said he had worked for all the big contractors in the area. Wyble asked where he was from and he said, New Orleans. Wyble asked if he was going to commute and Columbo said, “yes.” Wyble told him that Archdeacon would be back in a little while. Wyble then asked Columbo if he was union. Columbo said he was union and asked if this were a problem. Wyble said it would not be a problem. I credit Columbo’s unrebutted testimony concerning Wyble’s inquiry of him. Wyble gave him Archdeacon’s telephone number and Columbo called Archdeacon on that Friday. When Columbo had spoken to

Wyble he was not wearing anything that would identify him as a union organizer. In their telephone conversation Archdeacon asked if he was a licensed plumber and Columbo said, “yes.” Archdeacon said he had underground work which pays by the hour and fixtures which he pays by the piece. Archdeacon said he would be making a decision in the next few days and if he made the decision to hire Columbo, he could only bring up the union once. After that, he would consider it harassment. Columbo gave Archdeacon his cell phone and told him to call him whenever he decided. The next Monday, Columbo went to the jobsite and met Wyble who called Archdeacon on his cell phone and gave Columbo the phone. Archdeacon repeated that if he hired Columbo, he could only talk about the Union once and after that he would consider it harassment and that he would be making a decision in a few days. He never received a phone call from Archdeacon. Archdeacon testified he does not recall telling Columbo he could “only ask about the Union one time.” I credit Columbo’s detailed testimony and find that Archdeacon did on the above two telephone conversations tell Columbo that he could only bring up the union once and that after this he (Archdeacon) would consider this harassment. I find that this restriction on the discussion of the Union by an applicant for employment was inherently coercive and violated Section 8(a)(1) of the Act. I further find that Wyble’s interrogation of Columbo as to whether he was “union” violated Section 8(a)(1) of the Act.

The Respondent called James Donald Traylor, the executive director of the Louisiana Plumbing Board, in its case. Traylor testified as follows: The State Plumbing Board is responsible for examining and licensing persons for the performance of plumbing work. The State recognizes Journeyman plumbers and Master/Plumbers. Apprentices and helpers have been treated as the same. There has been a historical ratio of one apprentice for each journeyman although this has been a matter of dispute. The Plumbing Board has field enforcement officers who do random checks of jobs throughout the State to verify compliance with the license requirements. On August 24, 2004, the first inspection of the Southeastern University project manned by Myers Plumbing was made. The Plumbing Board issued a citation for a notice of violation which was sent to the office of Myers Plumbing. During the initial inspection the Plumbing Board’s enforcement officer observed David R. Guardero, Abel Jorge, Ramos V. Basilio and Alexandro Castro Bodiwar working at the job site. Since then the enforcement officers have visited the Myer Plumbing work site in Hammond on multiple occasions. The enforcement officers were unable to apprehend certain of the Hispanic speaking workers. On several occasions when these officers visited the jobsite they found tools, material and equipment laying there as if someone had been working but there was nobody there. The officers would wait for hours and nobody would return. Cans of glue for installing plastic pipe were left open laying there. It was obvious that people were working and suddenly left.

Archdeacon testified that an individual named Santiago hired these unlicensed plumbers to perform this work for the Respondent. Archdeacon testified that these individuals had started working the day before the August 24 inspection. He testified further that Respondent did not pay these individuals because they did not fill out the paperwork and did not return after August 24. However in an affidavit of Respondent’s former superintendent Mansfield, taken by the Plumbing Board which was received in evidence as Respondent’s Exhibit 14 he stated that a Hispanic crew worked under an individual named Santiago and performed work requiring a journeyman plumber license under Louisiana State

law. Mansfield further states in the affidavit that he kept track of the hours worked by the entire crew except for the Hispanic crew. For the Hispanic crew he kept track of the fixtures completed by each individual and in this report he identified the type of fixtures and the number completed. Their pay was calculated based on set rates for the types of fixtures. The report was sent into the main office of Respondent in Nashville, Tennessee. Payroll checks were sent to him for distribution each week. Only one check was sent to him for Santiago for the total amount due for his crew. Mansfield gave the check to Santiago who paid the crew from the proceeds of the check. Mansfield also recounts in his affidavit that on 5-6 occasions the jobsite was visited by Plumbing Board Enforcement Officers. When this occurred, plumbing workers contacted others on the jobsite by Nextel walkie-talkie to inform them that the officers were on the jobsite, to tell the unlicensed workers to leave the jobsite or to hide.

General Counsel contends that the foregoing demonstrates that Santiago's crew of unlicensed plumbers continued to work at the jobsite after August 24, and after October 30. I find the admissions contained in the affidavit of Respondent's former Superintendent Mansfield clearly establish that the Hispanic crew of employees continued to work on the jobsite which undermines the testimony of Archdeacon that he caused Rosser to be terminated because of concerns that Myers Plumbing comply with the one to one ratio. These all constitute admissions of Respondent's supervisor and agent Mansfield against Respondent's position in this case.

Analysis

I credit the unrebutted testimony of LeBlanc, Rosser and Joachim concerning the various discussions and actions taken part in by Mansfield. Mansfield did not testify.² I do not credit the testimony of Archdeacon that he terminated Rosser because of the one to one journeyman to apprentice/helper ratio. I also credit Joachim's testimony of conversations with Archdeacon rather than Archdeacon's. I found the testimony of LeBlanc, Rosser and Joachim to be straight forward, consistent and corroborative. Conversely, I find that Archdeacon's testimony was not supported by Mansfield who did not testify. Moreover I find that the evidence showed that Respondent permitted other employees who were not licensed plumbers to continue to work, notwithstanding their lack of a journeyman license. I note Respondent's use of a spreadsheet prepared for this trial appears to show a limited number of employees who were hired as helpers following the termination of Rosser which would tend to support Respondent's contentions in this case. However, I do not find this after the fact exhibit of Respondent's hiring conduct in this case is determinative when weighed against the credited testimony as set out above. Moreover, Respondent's own records show that

2 With regard to the admission of an affidavit taken by Respondent's counsel and purportedly made by Respondent's former superintendent Toby Mansfield, I reaffirm my ruling at the hearing that the affidavit was inadmissible as hearsay. The Respondent's counsel contended that it had served Mansfield with a subpoena and that he had not appeared at the hearing. He did not allege that the affiant was unavailable or seek any remedy of enforcement of the subpoena. *Marine Engineer District No. 1*, 312 NLRB 55 at 55 (1993). I further reject Respondent's other contentions argued in its brief supporting the admissibility of the affidavit as without merit. Respondent's Exhibit 8 entitled Affidavit of Toby Mansfield, Exhibit 9 entitled Affidavit of Troy Vernon are rejected as inadmissible hearsay. Exhibit 10 entitled Affidavit of Oscar Pineda is rejected as not having been identified by Pineda, who denied at the hearing that he had given it to Respondent's counsel.

Respondent hired Pineda on October 27, and did not terminate him on November 1, when he terminated Rosser.

Archdeacon was not present on the second day of the hearing. The parties stipulated that if Archdeacon were to testify he would state that Bonnie Woods was the individual who completed the employees' records jackets and that she is employed by Myers Plumbing in its Nashville home office and is responsible for all bookkeeping, payroll, compilation of Human Resource records and insurance and that she is an agent of Respondent under the Act. It was also stipulated that Archdeacon would further testify that Bonnie Woods would not be responsible for classifying employees in the appropriate position.

In support of its position that it did not hire any plumber helpers from October 27 to December 15, Respondent introduced Respondent's Exhibit 7 which is a spread sheet prepared by Archdeacon. The spread sheet purports to show employees at the jobsite and their classifications and particularly that Rosser and Joachim were hired on October 28 as plumbers and that Eugene Pace and Bobby Brown were hired as laborers on October 28 and that Alfred Mitchell, Jr., was hired as a laborer on November 10. However, as pointed out by General Counsel in brief, Archdeacon did not testify as to what documents he had relied on to prepare Respondent's Exhibit 7.

Conversely the employment record jackets of the personnel files of Pace, Brown and Mitchell show that they were hired as plumber helpers on October 30, November 3 and November 10, respectively. Moreover Respondent's new hire reporting forms (General Counsel's Exhibits 6, 8 and 9) submitted to the State of Tennessee show Pace, Brown and Mitchell were hired on October 30, November 3 and November 10, respectively. Moreover, I credit the unrebutted testimony of Joachim that on November 3, Brown told him he was a plumbers helper and that it was his first day on the job. I note that the rates of pay for Pace, Brown and Mitchell are in the lower \$9 to \$10 range which would tend to support Respondent's position that they were hired as laborers rather than plumbers helpers who were generally paid in the \$15 range but this is not dispositive particularly in view of the unrebutted testimony of Columbo that Foreman Wyble told him that everyone was paid a different rate.

In *NLRB v. Town and Country Electric*, 516 U.S. 85 (1995) the United States Supreme Court recognized that the rights of union organizers to apply for jobs and to hold those jobs are protected by Section 7 of the Act. The mere fact of their union organizer status does not diminish their rights to the protection of Section 7 of the Act. They are and remain "employees" as set out in the Act. In the instant case the evidence clearly establishes that Rosser committed no act which would deprive him of the protection of the Act. Clearly he was discharged because of engagement in protected concerted activities and his status as a union organizer.

Under *Wright Line*, 251 NLRB 1083 (1980) enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982) the General Counsel has the initial burden to establish that:

1. The employees engaged in protected concerted activities.

2. The Respondent had knowledge or at least suspicion of the employees' protected activities.
3. The employer took adverse action against the employees.
4. A nexus or link between the protected activities and the adverse action underlying motive.

Once these four elements have been established, the burden shifts to the Respondent to prove, by a preponderance of the evidence that it took the action for a legitimate nondiscriminatory business reason. In *Fluor Daniel, Inc.*, 304 NLRB 970 (1991) the Board said that once the General Counsel makes a prima facie case that protected conduct was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct. The Board noted that it is also well settled that when an employer's stated reasons for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one.

In the instant case it is clear that all of the elements set out in *Wright Line, supra*, as also addressed by *Fluor Daniel, supra*, have been satisfied. The credited testimony establishes that Rosser and Joachim were engaged in protected concerted activities in their effort to organize Respondent's jobsite. I have found that Archdeacon and Mansfield were aware of Rosser's and Joachim's protected activities as set out in the findings of the violations of Section 8(a)(1). Respondent took adverse action against Rosser by terminating him. I find Respondent's reason for Rosser's termination was his engagement in protected concerted activities in attempting to organize Respondent's jobsite. This establishes the nexus between the protected activities and the adverse action underlying motive. I have carefully reviewed Respondent's asserted reasons for the termination of Rosser, such as its concern with adhering to the one to one ratio of journeymen plumbers to apprentices/helpers and find that this asserted reason is pretextual in the face of the un rebutted testimony of Rosser and Joachim and the clear evidence that Respondent employed other apprentices/helpers and did not adhere to the ratio with respect to them as Respondent had apprentices/helpers performing plumbing work. I thus find that the General Counsel has established a prima facie case of a violation of Section 8(a)(1) and (3) of the Act and that Respondent has failed to rebut the prima facie case by the preponderance of the evidence.

I conclude that Respondent violated Section 8(a)(3) and (1) of the Act by its termination of Rosser.

IV. The Interrogation of Employees Rosser and Joachim by Superintendent Mansfield

Rosser testified that on October 29, which was their first day on the job, Superintendent Mansfield asked Rosser whether he was a union organizer and whether he intended to organize Myers Plumbing and how he (Rosser) would go about it. Prior to this neither Rosser nor Joachim had worn anything or said or done anything to identify themselves as union organizers. In answer to Mansfield's inquiry, Rosser acknowledged that he was a union organizer, that he would like to organize Respondent and said the first thing to do would be to get union authorization cards signed. Joachim corroborated Rosser's account of his inquiry. I credit this testimony of Rosser and Joachim which was un rebutted as Mansfield

did not testify. I find that Respondent violated Section 8(a)(1) of the Act by its interrogation of Rosser as to whether he was a union organizer, whether he intended to organize Respondent and how he would go about it. Under these circumstances I find that the inquiry of a newly hired employee who had not identified himself as a union member as to whether he was a union organizer, whether he intended to organize Respondent and how he would go about it, was inherently coercive and violative of Section 8(a)(1) of the Act.

V. The Prohibition of Employees from Discussing the Union.

Joachim testified that the next day (November 2) after the discharge of Rosser, Project Manager Archdeacon came to the job site and that he introduced himself to Archdeacon and told him he thought the discharge of Rosser was a “pretty shitty” thing to do. Joachim testified that Archdeacon said he did not mind Joachim being there but that he could only talk to employees about the Union one time and any further efforts to talk to the employees on behalf of the Union would be harassment. Archdeacon testified that there had been complaints by other employees who indicated they were not interested in the Union but that Joachim had continued to pursue the subject with them. Joachim and Rosser both testified that the employees freely discussed various subjects such as hunting and fishing while working. There was no rule prohibiting employees from engaging in discussions about various subjects.

I credit the testimony of Joachim and Rosser as set out above rather than the unsupported testimony of Archdeacon as none of the employees who were purported to have complained about Joachim’s discussion of the Union were called to testify. I find that Respondent’s prohibition of discussions on behalf of the Union while permitting other discussions while the employees were working was violative of Section 8(a)(1) of the Act as it infringed upon the employees’ Section 7 rights to support a union. I also find that Mansfield’s direction to Rosser at the time of his discharge to take it (his organizing) to the gate violated Section 8(a)(1) of the Act. When Mansfield terminated Rosser, Rosser asked if he was being terminated because he was a union organizer. Mansfield said, “No, the man said he don’t want any organizer on the job. If they want to do it, they can do it at the gate.” This not only prohibited Joachim from talking to employees about the Union. It also implicitly informed Rosser that he had been terminated because he was a union organizer and intended to organize Respondent’s employees.

I also find that Dana Columbo was told by Archdeacon on two occasions that he must restrict his discussions with other employers to one time. This admonition was violative of Section 8(a)(1) of the Act.

Conclusions of Law

1. Respondent is an employer within the meaning of Sections 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by interrogating its employees about their union activities.

4. Respondent violated Section 8(a)(1) of the Act by prohibiting its employees from talking to other employees about the Union and by informing employees they could only talk to other employees about the Union one time.

5. Respondent violated Section 8(a)(3) and (1) of the Act by terminating employee Ronnie Rosser because of his engagement in concerted activities and to discourage employees from engaging in these activities.

6. Respondent violated Section 8(a)(1) of the Act by implicitly informing its employee Ronnie Rosser that he had been terminated because he was a union organizer.

The above unfair labor practices in conjunction with Respondent's status as an employer affect commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, it shall be ordered to cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act.

It is recommended that Respondent offer immediate reinstatement to employee Ronnie Rosser to his former position or to a substantially equivalent one if his former position no longer exists. The above employee shall be made whole for all loss of backpay and benefits sustained by him as a result of Respondent's unlawful discharge of him and its failure to reinstate him. Respondent shall also remove from its files all references to the unlawful action taken against him and advise him in writing that it has done so.

All backpay and benefits shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950) with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987) at the "short term Federal Rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S. Code Section 6621.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:³

ORDER

The Respondent, Myers Plumbing, Inc., its officers, agents, successors, and assigns shall:

3 If no exceptions are filed as provided by § 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from:
 - (a) Unlawfully interrogating its employees about their union activities and membership.
 - (b) Prohibiting its employees from talking to other employees about the Union in order to stop the employees from organizing for the Union.
 - (c) Terminating its employees because of their union membership and activities.
 - (d) Telling its employees that they have been terminated because of their union activities.
 - (e) Violating the Act in any like or related manner.
2. Take the following affirmative actions to effectuate the policies of the Act.
 - (a) Offer Ronnie Rosser immediate and full reinstatement to his former position, or to a substantially equivalent position if his former position no longer exists.
 - (b) Make Ronnie Rosser whole, with interest, for any loss of earnings and benefits he may have sustained as a result of his unlawful termination.
 - (c) Preserve and, within 14 days of a request, provide at the office designated by the National Labor Relations Board or its agents, one copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.
 - (d) Post at its job site in Hammond, Louisiana if it still exists, copies of the notice "Appendix"⁴ consistent with the terms of this Order immediately upon receipt thereof, and maintain them for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted and mail a copy of the notices to all employees who were employed at the Hammond, Louisiana job site during the period October 1, 2004 to January 1 2005. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any material.
 - (e) Within 14 days from the date of this Order remove from its files any reference to the unlawful actions taken against the aforesaid employee and within 3 days

⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

inform him in writing of this and that these unlawful actions will not be used against him in any way.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C.

Lawrence W. Cullen
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

**Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you concerning your union activities.

WE WILL NOT terminate you because of your union membership and to discourage our employees from engaging in concerted union activities and membership.

WE WILL NOT inform you that you have been terminated because of your union membership and activities.

WE WILL NOT prohibit you from talking to our employees on behalf of Plumbers and Steamfitters Local No. 60.

WE WILL NOT in any like or related manner interfere with you in the exercise of your rights under the National Labor Relations Act.

WE WILL offer employee Ronnie Rosser immediate and full reinstatement to his former position or if his former position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights or privileges previously enjoyed.

WE WILL make employee Ronnie Rosser whole for any loss of earnings and other benefits sustained as a result of the discrimination against him, in the manner set forth in the remedy section of this decision, with interest.

MYERS PLUMBING, INC.
(Employer)

Dated: _____

By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine

whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Brinkley Plaza Building - 80 Monroe Avenue, Suite 350, Memphis, TN 38103
(901) 544-0018, Hours: 8: a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE
DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY
ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR
COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE
REGIONAL OFFICE'S

COMPLIANCE OFFICER, (901) 544-0011